

MICHIGAN CORPORATION & SECURITIES BUREAU

RELEASE NO. 93-2-S

TO: ALL INTERESTED PARTIES

SUBJECT: Section 402(b)(8) and Section 401(c)(4)(A)(iii)

General Background:

Section 402(b)(8) of the Michigan Uniform Securities Act, 1964 PA 264, as amended (the "Act") applies to:

Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, pension or profit-sharing trusts the assets of which are managed by an institutional manager, the treasurer of this state, other financial institution, broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity, or a lender approved by the Federal Housing Administration and who has satisfied any additional requirements established by the Administrator by rule or order.

Section 401(c)(4)(A)(iii) of the Act provides:

..."Broker-dealer" does not include...(4) a person with no place of business in this state if (A) he or she effects transactions in this state exclusively with or through...(iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees....

In the text of the Uniform Securities Act (as adopted by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1956, as slightly amended in 1958,) both Section 401(c)(4)(A)(iii) and Section 402(b)(8) are the same, except for the reference to offers and sales to "broker-dealers" in Section 402(b)(8).

Prior to the most recent re-draft of Section 402(b)(8) (effective November 30, 1990), both that section and Section 401(c)(4)(A) (iii) (effective December 27, 1988) were applicable to the same persons with one exception. Both were applicable to banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit sharing trusts, or other financial institutions or institutional buyers. However, Section 402(b)(8) included as an additional person offers or sales to a "broker-dealer". Section 401(c)(4)(A)(iii) on the other hand, excludes all those entitles from the definition of "broker-dealer".

In the November 30, 1990 amendment to the Michigan Act, Section 402(b)(8) was redrafted to include certain other persons such as the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association and a lender approved by the Federal Housing Administration. However, these persons were not included in Section 401(c)(4)(A)(iii).

Action or Interpretation:

The Bureau will interpret Section 401(c)(4)(A)(iii) as making reference to the same persons, except for broker-dealers, as does Section 402(b)(8).

AUTHORITY:

Act 265 of 1964, Section 402(b)(8) and Section 401(c)(4)(A)(iii).

Signed by Carl L. Tyson, Director
Corporation & Securities Bureau
Dated: June 25, 1993